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**HOUSE BILL 923**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

Larry A. Larranaga

**AN ACT**

**RELATING TO BOARDS; AMENDING AND ENACTING SECTIONS OF THE  
ENGINEERING AND SURVEYING PRACTICE ACT TO CLARIFY AND AUGMENT  
THE CURRENT LAW.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 61-23-2 NMSA 1978 (being Laws 1987,  
Chapter 336, Section 2, as amended) is amended to read:**

**"61-23-2. DECLARATION OF POLICY. -- The legislature  
declares that it is a matter of public safety, interest and  
concern that the practices of engineering and surveying merit  
and receive the confidence of the public and that only  
qualified persons be permitted to engage in the practices of  
engineering and surveying. In order to safeguard life, health  
and property and to promote the public welfare, any person in  
either public or private capacity practicing or offering to**

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1 practice engineering or surveying shall be required to submit  
2 evidence that he is qualified to so practice and shall be  
3 licensed as provided in the Engineering and Surveying Practice  
4 Act. It is unlawful for any person to practice, ~~[or]~~ offer to  
5 practice, ~~[in New Mexico]~~ engage in the business, act in the  
6 capacity of, advertise or ~~[to]~~ use in connection with his name  
7 or otherwise assume, use or advertise any title or description  
8 tending to convey the impression that he is a professional,  
9 licensed engineer or surveyor unless that person is licensed or  
10 exempt under the provisions of the Engineering and Surveying  
11 Practice Act. A person who engages in the business or acts in  
12 the capacity of a professional engineer or professional  
13 surveyor in New Mexico, except as otherwise provided in  
14 Sections 61-23-22 and 61-23-27.10 NMSA 1978, with or without a  
15 New Mexico license, has thereby submitted to the jurisdiction  
16 of the state and to the administrative jurisdiction of the  
17 board and is subject to all penalties and remedies available  
18 for a violation of any provision of Chapter 61, Article 23 NMSA  
19 1978. The practice of engineering or surveying shall be deemed  
20 a privilege granted by the board based on the qualifications of  
21 the individual as evidenced by the licensee's certificate,  
22 which shall not be transferable. "

23 Section 2. Section 61-23-3 NMSA 1978 (being Laws 1987,  
24 Chapter 336, Section 3, as amended) is amended to read:

25 "61-23-3. DEFINITIONS. -- As used in the Engineering and

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1 Surveying Practice Act:

2 A. "approved" or "approval" means acceptable to the  
3 board;

4 B. "board" means the state board of licensure for  
5 professional engineers and surveyors;

6 C. "conviction" or "convicted" means any final  
7 adjudication of guilt, whether pursuant to a plea of nolo  
8 contendere or otherwise and whether or not the sentence is  
9 deferred or suspended;

10 D. "engineer" means a person who is qualified to  
11 practice engineering by reason of his intensive preparation and  
12 knowledge in the use of mathematics, chemistry, physics and  
13 engineering sciences, including the principles and methods of  
14 engineering analysis and design acquired by professional  
15 education and engineering experience;

16 E. "engineering" or "practice of engineering" means  
17 any creative or engineering work that requires engineering  
18 education, training and experience in the application of  
19 special knowledge of the mathematical, physical and engineering  
20 sciences to such creative work as consultation, investigation,  
21 forensic investigation, evaluation, planning and design of  
22 engineering works and systems, expert technical testimony,  
23 engineering studies and the review of construction for the  
24 purpose of assuring substantial compliance with drawings and  
25 specifications; any of which embrace such creative work, either

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1 public or private, in connection with any utilities,  
2 structures, buildings, machines, equipment, processes, work  
3 systems, projects and industrial or consumer products or  
4 equipment of a mechanical, electrical, hydraulic, chemical,  
5 pneumatic, environmental or thermal nature, insofar as they  
6 involve safeguarding life, health or property, and including  
7 such other professional services as may be necessary to the  
8 planning, progress and completion of any engineering work. The  
9 "practice of engineering" may include the use of  
10 photogrammetric methods to derive topographical and other data.  
11 The "practice of engineering" does not include responsibility  
12 for the supervision of construction, site conditions,  
13 operations, equipment, personnel or the maintenance of safety  
14 in the work place;

15 F. "engineering committee" means a committee of the  
16 board entrusted to implement all business of the Engineering  
17 and Surveying Practice Act as it pertains to the practice of  
18 engineering;

19 G. "engineer intern" means a person who has  
20 qualified for, taken and passed an examination in the  
21 fundamental engineering subjects as provided in the Engineering  
22 and Surveying Practice Act;

23 H. "fund" means the professional engineers' and  
24 surveyors' fund;

25 I. "incidental practice" means the performance of

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1 other professional services that are related to a licensee's  
2 work as an engineer;

3 J. "person" means an individual, corporation,  
4 business trust, estate, trust, partnership, limited liability  
5 company, association, joint venture or any legal or commercial  
6 entity;

7 [~~J.~~] K. "professional development" means education  
8 by a licensee in order to maintain, improve or expand skills  
9 and knowledge obtained prior to initial licensure or to develop  
10 new and relevant skills and knowledge;

11 [~~K.~~] L. "professional engineer", "consulting  
12 engineer", "licensed engineer" or "registered engineer" means a  
13 person who is licensed by the board to practice the profession  
14 of engineering;

15 [~~L.~~] M. "responsible charge" means responsibility  
16 for the direction, control and supervision of engineering or  
17 surveying work, as the case may be, to assure that the work  
18 product has been critically examined and evaluated for  
19 compliance with appropriate professional standards by a  
20 licensee in that profession, and by sealing or signing the  
21 documents, the professional engineer or surveyor accepts  
22 responsibility for the engineering or surveying work,  
23 respectively, represented by the documents and that applicable  
24 engineering or surveying standards have been met;

25 [~~M.~~] N. "surveying" or "practice of surveying"

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1 means any service or work, the substantial performance of which  
2 involves the application of the principles of mathematics and  
3 the related physical and applied sciences for:

4 (1) the measuring and locating of lines,  
5 angles, elevations and natural and man-made features in the  
6 air, on the surface of the earth, within underground workings  
7 and on the beds or bodies of water for the purpose of defining  
8 location, areas and volumes;

9 (2) the monumenting of property boundaries and  
10 for the platting and layout of lands and subdivisions thereof;

11 (3) the application of photogrammetric methods  
12 used to derive topographic and other data;

13 (4) the establishment of horizontal and  
14 vertical controls for surveys for design, topographic surveys,  
15 including photogrammetric methods, construction surveys of  
16 engineering and architectural public works projects; and

17 (5) the preparation and perpetuation of maps,  
18 records, plats, field notes and property descriptions;

19 [N.] 0. "surveying committee" means a committee of  
20 the board entrusted to implement all business of the  
21 Engineering and Surveying Practice Act as it pertains to the  
22 practice of surveying;

23 [Ø.] P. "surveyor" or "professional surveyor" means  
24 a person who is qualified to practice surveying by reason of  
25 his intensive preparation and knowledge in the use of

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1 mathematics, physical and applied sciences and surveying,  
2 including the principles and methods of surveying acquired by  
3 education and experience, and who is licensed by the board to  
4 practice surveying;

5 [P-] Q. "surveyor intern" means a person who has  
6 qualified for, taken and passed an examination in the  
7 fundamentals of surveying subjects as provided in the  
8 Engineering and Surveying Practice Act; and

9 [Q-] R. "surveying work" means the work performed  
10 in the practice of surveying.

11 The board recognizes that there may be an overlap between  
12 the work of engineers and surveyors in obtaining survey  
13 information for the planning and design of an engineering  
14 project. A registered professional engineer who has primary  
15 engineering responsibility and control of an engineering  
16 project may perform an engineering survey. Engineering surveys  
17 may be performed by a licensed professional engineer on a  
18 project for which he is providing engineering design services.  
19 Engineering surveys include topographic surveying activities  
20 required to support the sound conception, planning, design,  
21 construction, maintenance and operation of said projects but  
22 exclude the surveying of real property for establishment of  
23 land boundaries, rights of way, easements and the dependent or  
24 independent surveys or resurveys of the public land system "

25 Section 3. Section 61-23-14.1 NMSA 1978 (being Laws 1993,

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1 Chapter 218, Section 12, as amended) is amended to read:

2 "61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--  
3 REQUIREMENTS. --

4 A. Licensure as a professional engineer may be  
5 either through examination or through endorsement or comity.  
6 In either case, an applicant shall file the appropriate  
7 application [~~where he shall demonstrate~~] in which it shall be  
8 demonstrated that [~~he~~] the applicant:

9 (1) is of good moral character and reputation;  
10 [~~(2) is certified as an engineer intern;~~  
11 ~~(3)] (2) has five references, three of whom  
12 shall be licensees practicing in the branch of engineering for  
13 which the applicant is applying and who have personal knowledge  
14 of the applicant's engineering experience and reputation. The  
15 use of nonlicensed engineer references having personal  
16 knowledge of the applicant's engineering experience and  
17 reputation other than professional engineers may be accepted by  
18 the board provided a satisfactory written explanation is given;  
19 and either~~

20 [~~(4)] (3) is certified as an engineer intern~~  
21 and has at least four years of board-approved engineering  
22 experience after graduation from a board-approved engineering  
23 curriculum; or

24 [~~(5)] (4) is certified as an engineer intern.~~  
25 and has [a minimum of], including the two years for engineer

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1 intern certification, at least six years of board-approved  
2 engineering experience after graduation from a board-approved,  
3 four-year engineering technology curriculum accredited by the  
4 technical accreditation commission of the accreditation board  
5 for engineering and technology; or

6 (5) has obtained a doctorate degree in an  
7 engineering discipline recognized by the board and has a  
8 minimum of four years of board-approved engineering experience  
9 subsequent to the awarding of the degree; or

10 (6) has obtained a master's degree in an  
11 engineering discipline recognized by the board from a board-  
12 approved program and has a minimum of six years of engineering  
13 experience subsequent to the awarding of the degree; or

14 (7) has graduated from a board-approved, four-  
15 year engineering curriculum and has twelve or more years of  
16 engineering experience acceptable to the board.

17 B. After the applicant's application is approved by  
18 the board, the applicant shall be allowed to take the  
19 appropriate examination for licensure as a professional  
20 engineer.

21 C. Upon successfully completing the examination,  
22 the applicant shall be eligible to be licensed as a  
23 professional engineer upon action of the board.

24 D. An applicant may be licensed by endorsement or  
25 comity if:

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1 (1) he is currently licensed as an engineer in  
2 the District of Columbia, another state, a territory or a  
3 possession of the United States, provided the licensure does  
4 not conflict with the provisions of the Engineering and  
5 Surveying Practice Act and that the standards required by the  
6 licensure or the applicant's qualifications equaled or exceeded  
7 the licensure standards in New Mexico at the time the applicant  
8 was initially licensed; or

9 (2) he is currently licensed as an engineer in  
10 a foreign country and can demonstrate, to the board's  
11 satisfaction, evidence that the licensure was based on  
12 standards that equal or exceed those currently required for  
13 licensure by the Engineering and Surveying Practice Act and can  
14 satisfactorily demonstrate to the board his competence in  
15 current engineering standards and procedures. "

16 Section 4. A new section of the Engineering and Surveying  
17 Practice Act, Section 61-23-23 NMSA 1978, is enacted to read:

18 "61-23-23. [NEW MATERIAL] AUTHORITY TO INVESTIGATE--CIVIL  
19 PENALTIES FOR UNLICENSED PERSONS--ENGINEERING. --

20 A. The board may investigate and initiate a hearing  
21 on a complaint against a person who does not have a license,  
22 who is not exempt from the Engineering and Surveying Practice  
23 Act and who acts in the capacity of a professional engineer  
24 within the meaning of the Engineering and Surveying Practice  
25 Act.

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1           B. If after the hearing the board determines that  
2 based on the evidence the person committed a violation pursuant  
3 to the Engineering and Surveying Practice Act, it shall, in  
4 addition to any other sanction, action or remedy, issue an  
5 order that imposes a civil penalty up to five thousand dollars  
6 (\$5,000) per violation.

7           C. In determining the amount of the civil penalty  
8 it imposes, the board shall consider:

- 9                   (1) the seriousness of the violation;
- 10                   (2) the economic benefit to the violator that  
11 was generated by the violator's commission of the violation;
- 12                   (3) the violator's history of violations; and
- 13                   (4) any other considerations the board deems  
14 appropriate.

15           D. A person aggrieved by the board's decision may  
16 appeal a decision made or an order issued pursuant to  
17 Subsection B of this section to the district court pursuant to  
18 Section 39-3-1.1 NMSA 1978.

19           E. Failure to pay a fine levied by the board or to  
20 otherwise comply with an order issued by the board pursuant to  
21 the Engineering and Surveying Practice Act is a misdemeanor,  
22 and upon conviction the person shall be sentenced pursuant to  
23 Section 31-19-1 NMSA 1978. Conviction shall be grounds for  
24 further action against the person by the board and for judicial  
25 sanctions or relief, including a petition for injunction. "

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1 Section 5. A new section of the Engineering and Surveying  
2 Practice Act, Section 61-23-27.15 NMSA 1978, is enacted to  
3 read:

4 "61-23-27.15. [NEW MATERIAL] AUTHORITY TO INVESTIGATE--  
5 CIVIL PENALTIES FOR UNLICENSED PERSONS--SURVEYING. --

6 A. The board may investigate and initiate a hearing  
7 on a complaint against a person who does not have a license,  
8 who is not exempt from the Engineering and Surveying Practice  
9 Act and who acts in the capacity of a professional surveyor  
10 within the meaning of the Engineering and Surveying Practice  
11 Act.

12 B. If after the hearing the board determines that  
13 based on the evidence the person committed a violation under  
14 the Engineering and Surveying Practice Act, it shall, in  
15 addition to any other sanction, action or remedy, issue an  
16 order that imposes a civil penalty up to five thousand dollars  
17 (\$5,000) per violation.

18 C. In determining the amount of the civil penalty  
19 it imposes, the board shall consider:

- 20 (1) the seriousness of the violation;  
21 (2) the economic benefit to the violator that  
22 was generated by the violator's commission of the violation;  
23 (3) the violator's history of violations; and  
24 (4) any other considerations the board deems  
25 appropriate.

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D. A person aggrieved may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor and upon conviction the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction. "